

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Donald Andrew Driggs**

**BK 17-43213**

**Debtor**

**Chapter 11**

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**NOTICE OF HEARING ON  
MOTION TO DISMISS CHAPTER 11 CASE**

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TO: The debtor, all creditors and other parties in interest:

The United States Trustee has filed a motion to dismiss the above named Chapter 11 case pursuant to 11 U.S.C. § 1112(b).

The hearing will be held on December 19, 2017 at 11:30 a.m. before the United States Bankruptcy Court, Courtroom 2B, U.S. Courthouse, 316 Robert Street, St. Paul, Minnesota.

Any response to this motion must be filed and delivered not later than December 14, 2017, which is five days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays). Local Bankruptcy Rule 9006-1.

Dated: \_\_\_\_\_

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CLERK OF BANKRUPTCY COURT

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COMES NOW the United States Trustee and moves the court to dismiss this chapter 11 case. In support of his motion, he states the following:

1. The hearing will be held on December 19, 2017 at 11:30 a.m. before the United States Bankruptcy Court, Courtroom 2B, U.S. Courthouse, 316 Robert Street, St. Paul, Minnesota.
2. Any response to this motion must be filed and delivered not later than December 14, 2017, which is five days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays). Local Bankruptcy Rule 9006-1.
3. The United States Trustee has standing to bring this motion pursuant to 11 U.S.C. § 307 and 28 U.S.C. § 586. This matter is a core-proceeding arising under 28 U.S.C. § 157(b)(2)(A). The bankruptcy court has jurisdiction pursuant to 28 U.S.C. § 1334. This motion is brought pursuant to 11 U.S.C. § 1112(b). Local Bankruptcy Rule 1017-2 provides that a motion to dismiss may be treated as a motion to convert if the court finds conversion in the best interest of the creditors and the estate.
4. The debtor commenced this case by filing a voluntary petition under chapter 11 on October 25, 2017.
5. Upon information and belief, the debtor filed the case to extend the redemption period of real estate under 11 U.S.C. § 108(b).

6. Debtor's counsel has indicated to the U.S. Trustee that the debtor no longer intends to proceed in chapter 11 and that the debtor would like the case dismissed.

7. Cause exists to convert this case to chapter 7 under 11 U.S.C. § 1112(b). Since the debtor no longer intends to proceed with this case, creditors will be prejudiced by any further delay in dismissing the case.

8. Dismissal is in the best interest of the estate. Most of the debtor's non-exempt assets are being administered in a prior case that was filed under chapter 11 but converted to chapter 7 on August 27, 2014. *See* Bankr. No. 13-42355. A final report in that case was filed on July 13, 2017. The schedules filed in this case show there is no equity in non-exempt assets in this case.

WHEREFORE, the United States Trustee requests that the Court dismiss this case.

Dated: November 28, 2017

DANIEL MCDERMOTT  
United States Trustee  
Region 12

/s/ Sarah J. Wencil  
Sarah J. Wencil  
Trial Attorney  
Office of U.S. Trustee  
Iowa Atty. No. 14014  
1015 United States Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415  
(612) 334-1350

**VERIFICATION**

I, Sarah J. Wencil, Trial Attorney for the United States Trustee for the District of Minnesota, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on November 28, 2017

/s/Sarah J. Wencil  
Trial Attorney  
Office of U.S. Trustee

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MEMORANDUM OF LAW

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Section 1112(b)(1) provides that the Court shall dismiss or convert a case for cause absent unusual circumstances specifically identified by the Court that establish that conversion or dismissal is not in the best interest of the estate. 11 U.S.C. § 1112(b)(1). Section 1112(b)(4) provides a non-exhaustive list of grounds for finding cause. *In re Kerr*, 908 F.2d 400 (8<sup>th</sup> Cir. 1990)(citing pre-BAPCPA §1112(b)); *In re Keeley and Grabanski Land Partnership*, 460 B.R. 520, 536 (Bankr. D. N.D. 2011)(citing post-BAPCPA §1112); *In re Walton Street Properties, LLC*, 2011 WL 7179642, at \* 3 (Bankr. W.D. Ark. 2011).

BAPCPA removed prejudice to creditors for unreasonable delay from §1112(b); however, because the factors under §1112(b) are not exclusive, courts have continued to find that cause under §1112 may also be unreasonable delay that is prejudicial to creditors. *Carreras v. Palmas Doradas Condo. Homeowners Ass'n (In re Carreras)*, 2013 Bankr. LEXIS 4567 (B.A.P. 1st Cir. Oct. 24, 2013).

In this case, the debtor has represented that it no longer desires to reorganize in chapter 11 and desires to have the case dismissed. If the debtor is not going to perform under chapter 11, dismissing the case to allow creditors to pursue their remedies in state court is in their best interests.

A bankruptcy court has broad discretion in deciding whether to dismiss or convert a

Chapter 11 case. *Lumber Exchange Bldg., Ltd. v. Mutual Life Ins. Co. (In re Lumber Exchange Bldg., Ltd.)*, 968 F.2d 647, 648 (8<sup>th</sup> Cir. 1992). The United States Trustee requests that the Bankruptcy Court dismiss this case for cause pursuant to 11 U.S.C. §1112(b)(4).

Dated: November 28, 2017

DANIEL MCDERMOTT  
United States Trustee  
Region 12

/s/ Sarah J. Wencil  
Sarah J. Wencil  
Trial Attorney  
Office of U.S. Trustee  
Iowa Atty. No. 14014  
1015 United States Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415  
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**UNSWORN CERTIFICATE OF SERVICE**

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The undersigned hereby certifies under penalty of perjury that on November 28, 2017, she caused to be filed electronically the attached: Notice of Hearing on Motion to Dismiss Chapter 11 Case, Notice of Hearing and Motion to Convert or Dismiss Chapter 11 Case, Verification, Memorandum of Law and proposed Order, thereby causing the following parties to be served by CM/ECF or first class mail postage pre-paid at the addresses set forth below:

CM/ECF:

- Joseph W. Dicker      joe@joedickerlaw.com,  
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- Kurtis A. Greenley      kgreenley.adr@gmail.com, sgoetl@lindquist.com
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**STATE OF MINNESOTA - DEPT OF REVENUE**

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District of Minnesota

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Minneapolis, MN 55415

Executed: November 28, 2017

/s/ Sarah J. Wencil

Sarah J. Wencil



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**ORDER**

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At St. Paul, Minnesota.

The United States Trustee's motion to dismiss or convert this chapter 11 case came before the bankruptcy court.

Based on the pleadings, file and record of the these proceedings:

IT IS HEREBY ORDERED: This chapter 11 case is converted to chapter 7 pursuant to 11 U.S.C. § 1112(b)(1).

Dated:

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William F. Fisher  
United States Bankruptcy Judge